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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Honorable R. Kirk Griffin, Circuit Court Judge

Opinion No. 2026-UP-415
Heard May 5, 2026 – Filed August 19, 2026

THE STATE,

RESPONDENT,

V.

DARIUS GRANT DICKEY,

APPELLANT

APPELLATE CASE NO. 2024-000145

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, counsel for Petitioner, Darius Dickey, respectfully requests this Court grant rehearing as to Issues I and III. On August 19, 2026, this Court issued an Opinion in which it affirmed Petitioner's convictions and sentences. *State v. Dickey*, Op. No. 2026-UP-415 (S.C. Ct. App. filed August 19, 2026).

I. The trial court erred by instructing the jury on accomplice liability, where there was no evidence that if Petitioner was not the shooter that he was aiding and abetting another person who was the shooter, since the improper instruction was hopelessly confusing.

The State alleged that Petitioner and Davijon McCall shot at each other, but their gunfire hit others in Mac's Lounge. Three men (Garrett Bakhsh, DiCaprio Collins, and Bryant Robinson) were shot and killed. Two men (Ivan Grandados and Leonard Sweetenburg) were hit by gunfire but survived. Davijon McCall was charged with the murders of Collins and Robinson. R. 95, l. 9 – 101, l. 3; R. 124, l. 23 – 126, l. 2; R. 208, ll. 8-12; R. 390, ll. 3-19. Petitioner was charged with the murder of Bakhsh, with the attempted murder of McCall, and with ABHAN as to Grandados and Sweetenburg. R. 554 – 565. Petitioner was tried separately from McCall. R. 1.

The State posited that McCall shot at Petitioner, but struck Collins and likely also struck Robinson; and Petitioner shot at McCall, but likely struck Bakhsh, as well as likely striking Grandados and Sweetenburg. This was based on testimony from people in the club, the locations of the people who were shot, and firearms evidence. R. 472, l. 1 – 480, l. 15; R. 95, ll. 13-22; R. 124, l. 23 – 125, l. 16; R. 210, l. 16 – 214, l. 16; R. 220, l. 3 – 222, l. 2; R. 227, l. 2 – 228, l. 16; R. 235, l. 18 – 236, l. 18; R. 250, l. 17 – 258, l. 17; R. 273, l. 19 – 277, l. 24; R. 296, l. 2 – 299, l. 4; R. 310, l. 3 – 327, l. 6.

Pretrial, the defense attempted to clarify upon what theory the State was going forward—counsel stated the prosecution had previously informed the defense it was proceeding on a mutual combat theory, but now it appeared the State was not. The defense also sought to confirm Petitioner only faced one count of murder at this trial. R. 87, l. 6 – 88, l. 7. Although the solicitor noted that Petitioner had been indicted for the additional murders of Robinson and Collins under a mutual combat theory, the solicitor stated the State was "backing off" of that. The solicitor stated the prosecution was going forward on a theory of transferred intent as to

Bakhsh, Grandados, and Sweetenburg, and specific intent as to McCall. R. 88, l. 11 – 89, l. 8; R. 92, l. 9 – 93, l. 8.

The evidence did not conclusively establish that Petitioner was a shooter, or that if he were a shooter, his bullets hit Bakhsh, Grandados, and Sweetenburg. R. 483, l. 17 – 496, l. 4. A patron (A.J. Wright) stated he saw Petitioner after the shooting, "jumping up and down asking who did it with the gun in his hand." Wright stated this was after he saw Petitioner, DiCaprio Collins, and another man walking towards the stage. According to Wright, Petitioner had his hands in his pants. Wright testified he heard "commotion" and "holler[ing]" and then gunshots. R. 342, l. 7 – 345, l. 17. Petitioner's cousin, Zyrig Thomas, testified he did not remember telling police that Petitioner fired shots that night. R. 361, l. 3 – 364, l. 14. However, Investigator Hause claimed Thomas told him DiCaprio Collins and Davijon McCall were fighting, and Petitioner grabbed McCall, then Petitioner and McCall shot at each other: Petitioner while backing away towards the patio and McCall while backing away towards the main entrance. R. 382, l. 5 – 385, l. 18. Investigator Hause testified his investigation showed it was "fair to say" that McCall fired the first shot. R. 406, ll. 1-11.

The State's firearms expert opined that Davijon McCall's gun fired a bullet recovered from the autopsy of Brian Robinson, and that McCall's gun may have fired a bullet recovered from DiCaprio Collins's autopsy. However, the expert could *not* say that the gun which fired the shell casings from Petitioner's car also fired the bullet fragments recovered from Garrett Bakhsh's autopsy. The expert also admitted that *McCall's* gun may have fired the shot which struck Bakhsh. R. 314, l. 5 – 318, l. 11; R. 318, l. 19 – 319, l. 23; R. 330, l. 15 – 333, l. 20.

Prior to closing arguments, the State sought an accomplice liability instruction.[1] The defense objected to the request and argued there was no evidence to support the charge, since Petitioner was not alleged to have been acting in concert with anyone. R. 457, ll. 6-19; R. 458, ll. 6-10. Defense counsel noted he was being forced to "play Whac-a-Mole" and stated he had tailored Petitioner's defense after the solicitor stated at the outset of trial it was not proceeding on a mutual combat theory. R. 457, l. 5 – 458, l. 14; R. 465, l. 23 – 466, l. 4. The State responded that Petitioner and McCall aided and abetted each other by shooting at each other in a crowded bar. R. 462, l. 7 – 463, l. 15. "[I]t's just hard for me to fathom the fact that just because we may not be able to definitely say who fired the fatal shot in a shootout in a bar that anyone should be able to benefit . . . since we don't know who shot whom, hey, tough luck." R. 464, l. 122 – 465, l. 10. The defense replied that "*Young* said that there has to be a pre-existing dispute and that the State is required to []prove the [rival] combatants were armed for the mutual combat with deadly weapons and each combatant knew the others were armed. And that's our, the basis of our objection." R. 467, ll. 13-18. The State did not seek a mutual combat instruction. The court took the matter under advisement but charged accomplice liability over objection. R. 468, l. 24 – 469, l. 2; R. 509, l. 21 – 511, l. 6.

In closing argument, the solicitor summed up the State's position by stating that Bakhsh, Grandados, and Sweetenburg were like "fish in a barrel caught in the crossfire" between Petitioner and McCall, when the two men shot at each other. R. 472, l. 1 – 473, l. 17. The solicitor told the jury that "hands of one is the hands of all" means "two people joined together for a legal purpose, then they are both responsible for anything that happens as a result of that,"

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[1] This Court noted in its Opinion the "State's conten[tion] Dickey opened the door to the need for the accomplice liability charge because its closing argument 'put into the minds of the jurors the very factual dispute that warranted the charge in the first place . . .'" *State v. Dickey*, Op. No. 2026-UP-415 at 9. However, the State sought this instruction before closing arguments.

and Petitioner "chose to go to this club". R. 477, ll. 17-24. The defense argued in its closing that the State had "not proven beyond a reasonable doubt that Davijon McCall didn't fire the bullet that ended Mr. Bakhsh's life." R. 492, ll. 22-24. The defense also argued the State was "grasping at straws" by bringing up hand of one, hand of all and noted there was no testimony Petitioner was acting in concert with anyone to commit a crime. R. 493, l/ 15 – 494, l. 4.

In addition to accomplice liability, the jury was charged on self-defense and defense of others. R. 511, l. 13 – 515, l. 24; R. 509, l. 9 – 511, l. 6. It was not charged on mutual combat. During deliberations, the jury asked a question regarding the possession of a weapon during the commission of a violent crime charge. The jury note stated the question was: "commission meaning 'him' as in Mr. Dickey on the case 2020-GS-16-0892"? R. 520, l. 23 – 521, l. 7. The foreperson clarified: "We needed a definition for the word 'commission' meaning is it the defendant or does it, well, does 'commission' mean just in general it happened, like the act happened? Or does it—is it stating that the defendant actually did this?" R. 522, ll. 20-24.

This Court found "there was evidence to support the trial judge's decision to charge accomplice liability." *State v. Dickey*, Op. No. 2026-UP-415 at 9. This Court concluded the "charge was appropriate in this case, as there was circumstantial evidence that Collins and Dickey were accomplices and that Bakhsh and the other victims were caught in the crossfire between Collins, Dickey, and McCall." *State v. Dickey*, Op. No. 2026-UP-415 at 10. The Opinion stated this Court "disagree[d]" the instruction was confusing. *State v. Dickey*, Op. No. 2026-UP-415 at 8, n. 7.

"In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2003). "Only law applicable to the case should be charged to the

jury." *State v. Blurton*, 352 S.C. 203, 208, 573 S.E.2d 802, 804 (2002). "[I]t is reversible error to charge a correct principle of law as governing a case when such principle is inapplicable to the issues on trial." *Dunsil v. E. M. Jones Chevrolet Co.*, 268 S.C. 291, 295, 233 S.E.2d 101, 103 (1977). "It is error to give instructions which are calculated to confuse or mislead the jury." *State v. Leonard*, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987) (citing *State v. Hewitt,* 205 S.C. 207, 31 S.E.2d 257 (1944)).

"[I]n a murder case involving a gunshot, the trial court should charge the law of accomplice liability when there is any evidence (1) the defendant had a mutual plan or agreement with another person to commit the murder, and (2) the other person in the mutual plan or agreement fired the fatal shot." *State v. Johnson*, 444 S.C. 442, 459-50, 908 S.E.2d 102, 106 (2024). (Hereafter, two prongs of *Johnson*). There must be evidence the accomplice was the shooter. *See Barber v. State*, 393 S.C. 232, 237, 712 S.E.2d 436, 439 (2011) (accomplice liability charge proper where there was "any evidence that another co-conspirator was the shooter and Barber was acting with him when the robbery took place"); *State v. Sellers*, 442 S.C. 140, 153, 898 S.E.2d 116, 123 (2024) ("Because the State presented evidence Sellers agreed with Gee to commit the burglary and robbery and evidence both Sellers and Gee beat Hydrick during the course of the two initial crimes, the hand of one jury instruction was supported by the evidence."); *State v. Washington*, 431 S.C. 394, 410, 848 S.E.2d 779, 787 (2020) (accomplice liability instruction improper where Kinloch was the only possible accomplice of the defendant whose actions could result in criminal liability for the defendant, and there was no evidence Kinloch shot the victim).

Petitioner respectfully asserts this Court has overlooked and/or misapprehended that there was no evidence Collins was a shooter and there was no evidence Petitioner had a mutual plan

with McCall (or Collins). Neither Collins nor McCall qualified this case for an accomplice liability instruction.

There was no evidence Petitioner was aiding and abetting another person (Collins) who was the shooter. An accomplice liability instruction would have been proper if there was evidence (1) Petitioner had a mutual plan or agreement with Collins to commit the murder, and (2) Collins fired the fatal shot. *State v. Johnson*, 444 S.C. at 459-50, 908 S.E.2d at 106. There was no evidence Collins shot. As to Collins, prong (2) of *Johnson* was not met. Both prongs must be met, so Collins could not be a proper basis for the instruction. This Court's Opinion implies that Collins and Petitioner had a plan, by referring to their friendship and arrival at the club together, and by holding there was evidence they were accomplices.[2] *State v. Dickey*, Op. No. 2026-UP-415 at 9 – 10. However, Petitioner submits this Court has misapprehended or overlooked that there was no evidence of conspiracy or a plan to commit a crime between Collins and Petitioner. Prong (1) was not met either. *Johnson*, 444 S.C. at 459-50, 908 S.E.2d at 106.

As to McCall, it was possible that McCall fired the fatal shots. However, there was no evidence Petitioner and McCall were coconspirators. Instead, the evidence showed Petitioner was acting in self-defense or defense of others if he shot; or, under the State's view, the men were adversaries. The mutual combat doctrine "has most often been applied in situations where the defendant and decedent bear a grudge against each other before the fight in which one of them is killed occurs." *State v. Taylor*, 356 S.C. 227, 232, 589 S.E.2d 1, 4 (2003). "[E]ach participant who willingly engages in mutual combat may be held accountable for the death or

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[2] This Court's Opinion referenced in its reasoning Angelena Deason's testimony that she initially thought the shots were meant for her. *State v. Dickey*, Op. No. 2026-UP-415 at 10. It is unclear what import this testimony has on the erroneous charging decision.

injury of an innocent bystander resulting from that confrontation . . . under the 'hand of one is the hand of all' theory of accomplice liability." *State v. Young*, 429 S.C. 155, 166, 838 S.E.2d 516, 522 (2020). Therefore, if Petitioner and McCall were engaged in mutual combat, Petitioner could be responsible for McCall's shots via accomplice liability. Mutual combat requires the State "to prove the rival combatants were armed for mutual combat with deadly weapons and each combatant knew the others were armed." *Id.*, 429 S.C. at 160, 838 S.E.2d at 519. "[T]here must be a mutual intent and willingness to fight, manifested by the acts and conduct of the parties and the circumstances attending and leading up to the combat." *Id.*, 429 S.C. at 160, 838 S.E.2d at 518-19 (cleaned up). The State did not show mutual combat; it did not show that Petitioner and McCall had prior ill will or dispute, manifested a mutual intent to fight, and were armed for mutual combat and each mutual combatant knew the other was armed. There was no evidence (1) Petitioner had a mutual plan or agreement with McCall to commit the murder. Prong (1) of *Johnson* was met as to McCall. The State did not seek an instruction on mutual combat and stated at the outset of the case it was not proceeding on that theory. The hand of one, hand of all instruction was improper. *Johnson*, 444 S.C. at 459-50, 908 S.E.2d at 106; *Young*, 429 S.C. at 160, 838 S.E.2d at 518-19.

The State did not present any evidence that (1) Petitioner had a mutual plan or agreement with Collins to commit the murder, *and* (2) Collins fired the fatal shot. Nor did it present any evidence (1) Petitioner had a mutual plan or agreement with McCall to commit the murder. The accomplice liability charge was inapplicable. *State v. Johnson*, 444 S.C. at 459-50, 908 S.E.2d at 106; *Barber v. State*, 393 S.C. at 237, 712 S.E.2d at 439. It was error to so charge the jury. *Dunsil v. E. M. Jones Chevrolet Co.*, 268 S.C. at 295, 233 S.E.2d at 103 (reversible error to charge a correct principle of law as governing a case when such principle is inapplicable to the

issues on trial); *State v. Leonard*, 292 S.C. at 137, 355 S.E.2d at 273 (error to give instructions which confuse or mislead the jury).

The instruction was prejudicial. The jury was charged on accomplice liability when there was no accomplice, and it was also charged on transferred intent. The jury question reflects that the jury was struggling with what Petitioner could be criminally responsible for if he were not the shooter. The State did not have to prove Petitioner fired the shots which struck the victims. The State averred its theory was specific intent and transferred intent: that Petitioner shot at McCall but his bullets struck the other men. The defense focused on defeating that theory. The State was then allowed to sandbag the defense with an inapplicable accomplice liability instruction to say it did not matter whose bullets they were. Petitioner was prejudiced. *See State v. Washington*, 431 S.C. at 411, 848 S.E.2d at 788 (erroneous accomplice liability instruction prejudiced defendant where the evidence was not overwhelming the defendant shot the victim and the accomplice liability charge invited the jury to speculate whether Kinloch—the only possible accomplice of the defendant—shot the victim, when there was no evidence Kinloch was the shooter); *State v. Taylor*, 356 S.C. at 235, 589 S.E.2d at 5 (trial court's unwarranted charge on mutual combat was prejudicial as it acted as a limitation on the Petitioner's ability to claim self-defense).

III. The trial court erred in admitting a body-camera recording which captured the immediate aftermath of the shooting,

A. Where any probative value of the evidence was substantially outweighed by the danger of unfair prejudice, since the evidence should have been excluded pursuant to Rule 403, SCRE;

B. Where any probative value of the evidence was substantially outweighed by considerations of needless presentation of cumulative evidence, since the recording should have been excluded pursuant to Rule 403, SCRE.

Officer Curtis, the second officer on scene, had a body-worn camera which recorded the immediate aftermath of the shooting. Curtis got there "[m]oments after" the shooting. R. 120, ll.

16-21. Curtis spoke to a crying and hysterical Angelena Deason outside the club. R. 122, l. 2 – 123, l. 6. Deason claimed that prior to the shooting she saw Petitioner pull a gun out and cock it, then put it back on his hip. According to Deason, she heard the gunshots break out shortly thereafter. Because of what she had seen, she assumed Petitioner fired shots. R. 251, l. 2 – 252, l. 18. Although both Deason and Curtis testified at trial, the State wanted Curtis's body-camera footage, which captured Deason's remarks, in evidence. A proffer was made during an in camera hearing on the admissibility of the footage. R. 102, l. 18 – 118, l. 4.

In addition to containing Deason's remarks, the recording captured video and audio of the following. Officer Curtis runs up to the nightclub. Patrons and employees are wailing and cursing. Blood-curdling screams ring out over and over. People clutch the bodies of their dead and dying loved ones, screaming: "Oh, God!" "No, no!" "Oh, no!" Officers open a bathroom door and find panicked and crying people hiding inside. An angry patron yells at officers and threatens to kill people. Bodies of multiple victims—some living and some dead—are strewn around. People put pressure on a man's chest wound. A man is given oxygen and loaded onto a stretcher. A medic asks Officer Curtis for a police escort to the ambulance due to the violence and chaos. The camera returns to the people wailing and clutching their dead loved ones repeatedly as Officer Curtis walks around trying to secure the scene. State's Exhibit #1.

Petitioner objected to the admission of the recording based on Rule 403, SCRE. Defense counsel argued that the footage was cumulative since Deason was available to testify and any other persons on the footage could be called to testify if the State chose. The defense also argued the footage was unfairly prejudicial. Petitioner objected wholesale to the admission of the footage, and he additionally argued that if the footage were admitted, the court should order the recording be muted and order that images of the bodies be redacted. R. 113, l. 21 – 114, l. 25.

The prosecutor responded that the footage was probative of the placement of the bodies and said the State had partially redacted the footage. The prosecutor also stated, "We'd ask that you don't mute the sound on that body cam." R. 115, ll. 1-20. The court found the recording was admissible. R. 116, l. 23 – 117, l. 24.

This Court "disagree[d]" with Petitioner's argument the video was "'incredibly emotional' and unnecessary" and found no error in its admission. *State v. Dickey*, Op. No. 2026-UP-415 at 6 – 7. This Court concluded the "video had high probative value with regards to helping the jury understand the size of Mac's Lounge and the placement of the pool table, deck, stage, and main entrance. The video was also corroborative of witness testimony." *State v. Dickey*, Op. No. 2026-UP-415 at 7. The Opinion stated, "While the video depicted the disturbing aftermath of a violent shooting with multiple victims, this type of scene is not unexpected in the immediate wake of such an event." *State v. Dickey*, Op. No. 2026-UP-415 at 7.

"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

As to unfair prejudice: "The determination of whether the danger of unfair prejudice outweighs the probative value of evidence must be based on the entire record and will turn on the facts of each case." *State v. Holland*, 385 S.C. 159, 171, 682 S.E.2d 898, 904 (Ct. App. 2009) (quoting *State v. Lyles*, 379 S.C. 328, 338, 665 S.E.2d 201, 206 (Ct. App. 2008)). "The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to

the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997). "To constitute unfair prejudice, the photographs must create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *State v. Martucci*, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008) (quoting *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995)). "[P]otential for an emotional reaction is the essence of the danger of unfair prejudice." *State v. Heyward*, 441 S.C. 484, 501, 895 S.E.2d 658, 667 (2023). *See also State v. Saltz*, 346 S.C. 114, 127, 551 S.E.2d 240, 247 (2001) (same); *State v. Phillips*, 430 S.C. 319, 328, 844 S.E.2d 651, 656 (2020) ("Unfair prejudice is the tendency of the evidence to suggest a decision based on something other than the legitimate probative force of the evidence.").

"The trial judge must balance the prejudicial effect of graphic photographs against their probative value." *State v. Martucci*, 380 S.C. at 249, 669 S.E.2d at 607. "Although photographs may be used to corroborate other evidence, it is well-established that photographs calculated to arouse the sympathies and prejudices of the jury are to be excluded if they are irrelevant or unnecessary to the issues at trial." *State v. Middleton*, 288 S.C. 21, 24, 339 S.E.2d 692, 693 (1986) (cleaned up). "In the *guilt* phase of a trial, photographs of the murder victims should be excluded where the facts they are intended to show have been fully established by competent testimony." *State v. Kornahrens*, 290 S.C. 281, 288-289, 350 S.E.2d 180, 185 (1986) (emphasis in original). "Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions." *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 228 (2010) (citing *State v. Brazell*, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997)).

As to cumulative evidence: *see State v. Hess*, 279 S.C. 14, 18, 301 S.E.2d 547, 550 (1983) (upholding exclusion of evidence based on inadmissibility of cumulative testimony); *State v. Gault*, 375 S.C. 570, 574, 654 S.E.2d 98, 100 (Ct. App. 2007) (no error in excluding photographs of tinted windows where witness already testified windows were tinted; evidence was properly excluded as cumulative pursuant to Rule 403, SCRE).

In *State v. Collins*, 409 S.C. 524, 528, 763 S.E.2d 22, 25 (2014), a ten-year-old child died after being "severely mauled by dogs." The defendant was tried for involuntary manslaughter and three counts of being the owner of a dangerous animal that attacked and injured a human being. *Id.*, 409 S.C. at 530–31, 763 S.E.2d at 25–26. These offenses required the State to prove, among other things, that the defendant "knew or reasonably should have known the animal had a propensity, tendency, or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings"; and the defendant killed another without malice and unintentionally while engaged in either (1) an unlawful activity not amounting to a felony and not naturally tending to cause death or great bodily harm, or (2) a lawful activity with a reckless disregard of the safety of others. *Id.* "[T]he nature and extent of the boy's physical injuries as described by the pathologist were in contention by the defense." *Id.*, 409 S.C. at 533, 763 S.E.2d at 27. Additionally, defense witnesses "maintained the dogs were not at all dangerous." *Id.* The State admitted over objection a group of photographs of the victim taken by the forensic pathologist before he began the autopsy "[i]n order to support its assertions about the dangerous propensities of the dogs, the manner and extent of the attack, and Collins's criminal negligence[.]" *Id.*, 409 S.C. at 532, 763 S.E.2d at 27. The South Carolina Supreme Court held: "The evidence was highly probative, corroborative, and material in establishing the elements of the offenses charged; its probative value outweighed its potential prejudice[.]" *Id.*, 409 S.C. at 535, 763

S.E.2d at 28. "Courts must often grapple with disturbing and unpleasant cases, but that does not justify preventing *essential* evidence from being considered by the jury[.]" *Id.* (emphasis added). *See State v. Nelson*, 440 S.C. 413, 426–27, 891 S.E.2d 508, 515 (2023) ("Other convincing evidence established malice and how Victim was killed, thereby eliminating the photos' probative value. Thus, we believe the danger of unfair prejudice substantially outweighed any minimal probative value of the autopsy photos in this case.").

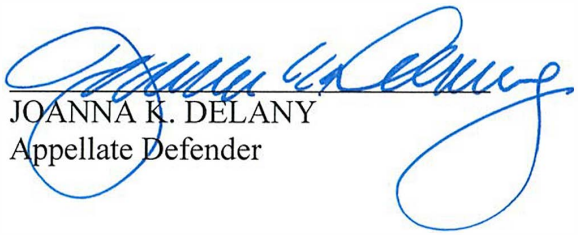
Petitioner respectfully asserts this Court misapprehended or overlooked that the evidence was not essential but cumulative—the State entered other evidence which established the layout of the club and corroborated witness testimony but lacked the highly emotional content of the video. Witnesses, including Angelena Deason, Officer Curtis, Officer Goodman, Agent Pauli, Officer Hause, Officer Cottingham, Ivan Grandados, Jeremy Grantham, Angelina Garcia, and A.J. Wright testified about the events, circumstances, and scene. They were all either present during the shooting or responded to the scene. E.g., R. 121, l. 2 – 126, l. 7; R. 255, l. 25 – 256, l. 13. The State introduced several detailed, color-coded diagrams of the scene which were created by SLED Agents Pauli and Sprouse. R. 543 – 546; R. 174, l. 7 – 175, l. 12. It introduced through Agent Pauli approximately 70 photographs of the scene taken by her the night of the shooting. R. 169, ll. 3-21; R. 176, l. 17 – 178, l. 22. Instead of being essential, as in *Collins*, the evidence's probative value was low or none, as it was in *Nelson*, since the State had a plethora of evidence to establish the same things that were depicted in the recording. The footage carried a high potential for unfair prejudice. The emotional content of this video cannot be overstated. The screams are bone-chilling. It would be next to impossible for jurors to watch and listen to this footage without imagining this happening to themselves or their loved ones. That is the essence of unfair prejudice. The evidence should have been excluded pursuant to Rule 403,

SCRE. *State v. Nelson*, 440 S.C. at 426–27, 891 S.E.2d at 515; *State v. Collins*, 409 S.C. at 535, 763 S.E.2d at 28; *State v. Hess*, 279 S.C. at 18, 301 S.E.2d at 550.

The error in admitting the evidence was not harmless. "The harmless error rule generally provides that an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained." *State v. Collins*, 409 S.C. at 537, 763 S.E.2d at 29. While there was evidence Petitioner was at the scene and had a weapon, only one witness claimed he fired the weapon, and that witness recanted. Another witness testified Petitioner was asking "who did it" after the shooting. It was unclear whose shots hit these victims. The jury was charged on self-defense and defense of others. It deliberated for more than three-and-a-half hours. R. 520, l. 20 – 531, l. 4. The error was not harmless beyond a reasonable doubt. *See State v. Jones*, 440 S.C. 214, 264, 891 S.E.2d 347, 373 (2023) (horrific autopsy photographs were harmless because they did not contribute to the jury's sentence of death; sentence was instead result of the defendant's horrific killing of his five small children while they begged for mercy); *State v. Nelson*, 440 S.C. at 426, 891 S.E.2d at 514 (admission of excessively gruesome autopsy photos unnecessarily created the potential for the jury to convict defendant of the murder based on inflamed emotions).

Petitioner respectfully submits this Court should grant rehearing as to Issues I and III.

Respectfully Submitted,



JOANNA K. DELANY
Appellate Defender

This 3rd day of September, 2026.

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DARIUS GRANT DICKEY,

APPELLANT

APPELLATE CASE NO. 2024-000145

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon W. Joseph Maye, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Darius Grant Dickey, #383090, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 3rd day of September, 2026.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

Outlook

2024-000145 The State v. Darius Grant Dickey

From Walkup, Catherine <cwalkup@sccid.sc.gov>
Date Thu 9/3/2026 4:23 PM
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Cc Delany, Joanna <jdelany@sccid.sc.gov>; brandyrankin@scag.gov <brandyrankin@scag.gov>

2 attachments (977 KB)

2024-000145 The State v. Darius Grant Dickey Petition for Rehearing.pdf; 2024-000145 The State v. Darius Grant Dickey Petition for Rehearing Attorney General Letter.pdf;

Good afternoon,

Attached for service in the above-referenced case is the Petition for Rehearing which will be filed today September 3rd with the Court of Appeals via email filing.

Respectfully,

Catherine Walkup, Administrative Assistant

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